

10815-R2056

SGS/JLB/kmp

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DISABLED PATRIOTS OF AMERICA,)	
INC., a Florida not for profit corporation,)	
and BONNIE KRAMER, individually,)	
)	
Plaintiff,)	No. 07 C 6363
)	
v.)	Judge Kendall
)	Magistrate Judge Cox
SIMON PROPERTY GROUP)	
(DELAWARE), INC., a Delaware)	
corporation,)	
)	
Defendants.)	

DEFENDANT'S ANSWER AND DEFENSES TO THE COMPLAINT

Defendant, SIMON PROPERTY GROUP (DELAWARE), INC. ("Simon"), by and through one of its attorneys, HEYL, ROYSTER, VOELKER & ALLEN, answers and asserts the following defenses to the Complaint of Plaintiffs, DISABLED PATRIOTS OF AMERICA and BONNIE KRAMER (hereinafter collectively referred to as "Plaintiffs"), and says:

1. Simon is without knowledge as to the allegations contained in Paragraph 1.
2. Simon is without knowledge as to the allegations contained in Paragraph 2.
3. Simon admits that Lincolnwood Town Center is located in County of Cook.

Otherwise, Simon denies the remaining allegations contained in Paragraph 3.

4. Simon admits that the property is located and does business within this judicial district.

Otherwise, Simon denies the remaining allegations contained in Paragraph 4.

5. Simon admits that this Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343

and that venue is proper in the Northern District of Illinois. Otherwise, Simon denies the remaining allegations contained in Paragraph 5.

**HEYL ROYSTER
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& ALLEN**

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6. Simon denies the allegations contained in Paragraph 6.

7. Simon denies the allegations contained in Paragraph 7.

8. Simon admits that 28 C.F.R. §§ 36.204(a) and 36.104 speak for themselves.

Otherwise, Simon denies the remaining allegations contained in Paragraph 8.

9. Simon denies the allegations contained in Paragraph 9.

10. Simon denies the allegations contained in Paragraph 10.

11. Simon denies the allegations contained in Paragraph 11, including all subparts.

12. Simon denies the allegations contained in Paragraph 12.

13. Simon admits that 42 U.S.C. § 12181 et seq. and 28 C.F.R. § 36.302 et seq. speak for themselves. Otherwise, Simon denies the remaining allegations contained in Paragraph 13.

14. Simon admits that 42 U.S.C. § 12205 and 28 C.F.R. § 36.505 speak for themselves.

Otherwise, Simon denies the remaining allegations contained in Paragraph 14.

15. Simon admits that 28 C.F.R. §§ 36.304(a), 36.401 and 36.402 speak for themselves.

Otherwise, Simon denies the remaining allegations contained in Paragraph 15.

16. Simon denies the allegations contained in Paragraph 16.

17. Simon admits that 42 U.S.C. § 12188 speaks for itself. Otherwise, Simon denies the remaining allegations contained in Paragraph 17.

GENERAL DENIAL

18. Simon denies each and every allegation and prayer of the Complaint not specifically admitted above.

ATTORNEY'S FEES

19. Simon has retained the law firm of Baker & Hostetler LLP and has agreed to pay it a reasonable fee for its services. Pursuant to 28 U.S.C. § 1927 and 42 U.S.C. § 12205, Simon is entitled to recover its attorney's fees and costs.

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FIRST DEFENSE

20. Plaintiffs do not have standing to bring this action, and therefore, the Complaint should be dismissed.

SECOND DEFENSE

21. Plaintiffs have demanded modifications that would result in significant loss of sale and/or serving space and, therefore, such modifications are not readily achievable.

THIRD DEFENSE

22. Plaintiffs have demanded modifications to the Facility that are either not readily achievable, structurally impracticable, technically infeasible, or are not required.

FOURTH DEFENSE

23. Plaintiffs have demanded modifications to the Facility that would either create an undue hardship, or that would threaten the health and safety of Plaintiffs or others.

FIFTH DEFENSE

24. Each of Plaintiffs' causes of action, claims, or items of damage did not accrue within the time prescribed by law for them before this action was brought.

SIXTH DEFENSE

25. Prior to the institution of this action, the removal of any existing barriers pursuant to 28 C.F.R. § 36.304 to the extent the removal of said barriers were readily achievable had been implemented, therefore, Plaintiffs are not entitled to an injunction or attorney's fees.

SEVENTH DEFENSE

26. Plaintiffs have demanded modifications that would require a fundamental alteration in the way goods and services are provided or would result in an undue burden.

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EIGHTH DEFENSE

27. The Complaint fails to state a cause of action upon which relief may be granted.

NINTH DEFENSE

28. To the extent any architectural barriers exists, they are merely technical violations within acceptable conventional building industry tolerances for field conditions and the Facility, when taken as a whole is compliant with the ADA and its implementing regulations.

TENTH DEFENSE

29. To the extent the Complaint seeks relief for any area that is the responsibility of the owner or another, an indispensable party defendant has not been joined in this action because the allegations of the Complaint may show that the purported violations include facilities that are the responsibility of another and it has not been joined in this action.

ELEVENTH DEFENSE

30. Simon does not own, operate or lease the property at issue and, therefore, is not liable for compliance on property which it does not own, operate or lease.

TWELFTH DEFENSE

31. To the extent any architectural barriers exists, they have already been remedied and/or removed and the issues are now moot and the facilities are compliant with the ADA and its implementing regulations.

SIMON PROPERTY GROUP (DELAWARE), INC.,

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon all parties to the above cause via the CM/ECF System on the 14th day of December, 2007.

TO:

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s/ Scott G. Salemi

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